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                     IN THE UNITED STATES DISTRICT COURT
                         FOR THE DISTRICT OF NEBRASKA
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        TROY M. HURD,
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                                                 4:16CV3029
                         Plaintiff,
 5
                  VS.
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        THE CITY OF LINCOLN, a
                                               Omaha, Nebraska
 7
                                              February 13, 2019
        Political Subdivision,
        et al.,
 8
                          Defendants.
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                      PARTIAL TRANSCRIPT OF PROCEEDINGS
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                    BEFORE THE HONORABLE LAURIE SMITH CAMP
                   UNITED STATES DISTRICT JUDGE AND A JURY
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       COURT REPORTER:
                                     Ms. Brenda L. Fauber, RDR, CRR
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       Proceedings recorded by mechanical stenography, transcript
       produced with computer.
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3	FOR	THE	PLAINTIFF:	Ms. Paige Fiedler Fiedler Law Firm
4				8831 Windsor Parkway Johnston, IA 50131
5				Ms. Kelly K. Brandon Fiedler Law Firm
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7				Gretna, NE 68028
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9	FOR	THE	DEFENDANTS:	Ms. Elizabeth D. Elliott Ms. Jocelyn W. Golden Ms. Abigail F. Littrell
10				Lincoln City Attorney's Office
11				555 South 10th Street Suite 300 Lincoln, NE 68508
12				HINCOIN, NE 00300
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            (At 12:50 p.m.)
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                THE COURT: So the plaintiff rests, as I understand.
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                MS. FIEDLER: That's correct, your Honor; plaintiff
       rests.
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                THE COURT: Very good.
            And does the defense have a motion?
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                MS. GOLDEN: Yes, your Honor.
            Your Honor, we would move for a judgment as a matter of
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       law under Rule 50. Plaintiff has not presented sufficient
       evidence that a reasonable jury could find in favor of him.
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            Plaintiff has not established that he engaged in a good
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       faith protected activity.
            Additionally, plaintiff has not established a material
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       adverse action or rebutted the legitimate business reasons
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       offered by the City of Lincoln.
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            Finally, plaintiff has not shown that the City of Lincoln
       would have imposed a material adverse employment action but
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       for plaintiff's alleged protected activity.
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            The disciplinary actions were issued by three different
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       supervisors for legitimate errors committed by plaintiff, and
       they were not materially adverse.
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            And the battalion chief promotion was not awarded to
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       plaintiff because he was not the most qualified candidate by
       his own admission.
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            Finally, an EMS supervisor position was never open that
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1 he could have been chosen for. 2 For these reasons, we would move for judgment as a matter 3 of law. THE COURT: Very good. 5 That's noted for the record. I recognize this case is somewhat unusual in that it involves an alleged series of 6 7 adverse employment actions. And it may be questionable 8 whether any one of those alone would be sufficient to be considered an adverse action. 9 But I respect the earlier rulings by Judge Kopf allowing 10 the matter to proceed on the Title VII claim and the Nebraska 11 12 Fair Employment Practices Act claim on the theory that the alleged adverse actions, taken as a whole, over a period of 13 14 time may have created a hostile work environment which may 15 have been an adverse action. 16 So I will deny the defense motion. 17 18 19 20 I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. 21 2.2 23 ____March 31, 2019 /s Brenda L. Fauber Brenda L. Fauber, RDR, CRR Date

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